

800 Coastal Highway, Fenwick Island, DE 19944-4409 302-539-3011 ~ 302-539-1305 fax www.fenwickisland.delaware.gov

# CHANGE IN LOCATION OF HEARING

#### TOWN OF FENWICK ISLAND

#### **BOARD OF ADJUSTMENTS HEARING**

Roxana Volunteer Fire Company 35943 Zion Church Road Frankford, DE 19945

THURSDAY, AUGUST 23, 2018

1:00 P.M.

Call to Order

• Review Session with Board Solicitor

2:00 P.M.

# **Public Hearing**

- Request for Variance
  - Robert & Brenda Shelton
     E. Houston Street
     Fenwick Island, Delaware
- Request for Variance and Appeal to Decision of Building Official
  - Buas Sands Hotel LLC, a Delaware Limited Liability Company (Mr. Spiro Buas)
     1501 Coastal Highway
     Fenwick Island, Delaware

POSTED: AMENDED: August 6, 2018 August 8, 2018



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POSTED: August 6, 2018



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# CHANGE IN LOCATION OF HEARING

# LEGAL NOTICE

THERE WILL BE A PUBLIC HEARING BEFORE THE TOWN OF FENWICK ISLAND BOARD OF ADJUSTMENTS IN ACCORDANCE WITH CHAPTER 160 (ZONING) OF THE CODE OF THE TOWN OF FENWICK ISLAND, DELAWARE, ON A REQUEST FOR AN APPEAL OF THE BUILDING OFFICIAL'S DECISION OF THE CALCULATION OF BUILDING HEIGHT OR A VARIANCE TO THE MAXIMUM ROOF HEIGHT AT 1501 COASTAL HIGHWAY (ALSO KNOWN AS 1-34 23.12 179.00), LOCATED WITHIN THE INCORPORATED LIMITS OF THE TOWN FOR A SIX FEET ENCROACHMENT FOR THE INSTALLATION OF AN ELEVATOR.

THE HEARING WILL BE HELD ON THURSDAY, AUGUST 23, 2018 AT 2:00 P.M. AT ROXANA VOLUNTEER FIRE COMPANY, 35943 ZION CHURCH ROAD, FRANKFORD, DELAWARE.

INTERESTED PERSONS MAY INSPECT PLOT PLANS AT TOWN HALL DURING TOWN BUSINESS HOURS, MONDAY THROUGH FRIDAY, 8:00 A.M. TO 4:00 P.M.

BOARD OF ADJUSTMENTS TOWN OF FENWICK ISLAND

POSTED: JULY 25, 2018 AMENDED: AUGUST 7, 2018

# Coastal Print

P.O. Box 1324 • 111 Atlantic Ave. • Ocean View, DE 19970 (302)539.1788 • Fax: (302)539.3777

# **LEGAL AFFIDAVIT**

#### FOR:

Town of Fenwick Island 800 Coastal Highway Fenwick Island, DE 19944

DATES RUN: August 10, 2018

COST PER WEEK: \$31.50

# **CERTIFICATE OF PUBLICATION**

August 24 Meeting Notice - Second Notice

This is to certify that the attached has been published in Coastal Point, a weekly paper of general circulation in southeastern Sussex County, published in Ocean View, Delaware on the following dates:

August 10, 2018

Signature:

Jane F. Johnson

# CHANGE IN LOCATION OF HEARING FENWICK ISLAND LEGAL NOTICE

THERE WILL BE A PUBLIC HEARING BEFORE THE TOWN OF FENWICK ISLAND BOARD OF ADJUSTMENTS IN ACCORDANCE WITH CHAPTER 160 (ZONING) OF THE CODE OF THE TOWN OF FENWICK ISLAND, DELAWARE,

ON A REQUEST FOR A VARIANCE TO THE SIDE SETBACK AT
 E. HOUSTON STREET (ALSO KNOWN AS (1-34 23.12 194.00, LOT 9),
 LOCATED WITHIN THE INCORPORATED LIMITS OF THE TOWN FOR A 3.4 FEET ENCROACHMENT FOR THE INSTALLATION OF AN ELEVATOR.

• ON A REQUEST FOR AN APPEAL OF THE BUILDING OFFICIAL'S DECISION OF THE CALCULATION OF BUILDING HEIGHT OR A VARIANCE TO THE MAXIMUM ROOF HEIGHT AT 1501 COASTAL HIGHWAY (ALSO KNOWN AS 1-34 23.12 179.00), LOCATED WITHIN THE INCORPORATED LIMITS OF THE TOWN FOR A SIX FEET ENCROACHMENT FOR THE INSTALLATION OF AN ELEVATOR.

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CP 20180810 2T



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# LEGAL NOTICE

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THE HEARING WILL BE HELD ON THURSDAY, AUGUST 23, 2018 AT 2:00 P.M. IN FENWICK ISLAND TOWN HALL.

INTERESTED PERSONS MAY INSPECT PLOT PLANS AT TOWN HALL DURING TOWN BUSINESS HOURS, MONDAY THROUGH FRIDAY, 8:00 A.M. TO 4:00 P.M.

BOARD OF ADJUSTMENTS TOWN OF FENWICK ISLAND

JULY 25, 2018

P.O. Box 1324 • 111 Atlantic Ave. • Ocean View, DE 19970 (302)539.1788 • Fax: (302)539.3777

# **LEGAL AFFIDAVIT**

#### FOR:

Town of Fenwick Island 800 Coastal Highway Fenwick Island, DE 19944

DATES RUN: July 27, 2018

COST PER WEEK: \$42.00

# CERTIFICATE OF PUBLICATION

August 23 Board of Adjustment Notice - Buas Sands Hotel

This is to certify that the attached has been published in Coastal Point, a weekly paper of general circulation in southeastern Sussex County, published in Ocean View, Delaware on the following dates:

July 27, 2018

Signature:

Jane F. Johnson

# TOWN OF FENWICK ISLAND LEGAL NOTICE

THERE WILL BE A PUBLIC HEARING BEFORE THE TOWN OF FENWICK ISLAND BOARD OF ADJUSTMENTS IN ACCORDANCE WITH CHAPTER 160 (ZONING) OF THE CODE OF THE TOWN OF FENWICK ISLAND, DELAWARE, ON A REQUEST FOR A VARIANCE TO THE MAXIMUM ROOF HEIGHT AT 1501 COASTAL HIGHWAY (ALSO KNOWN AS 1-34 23.12 179.00), LOCATED WITHIN THE INCORPORATED LIMITS OF THE TOWN FOR A SIX FEET ENCROACHMENT FOR THE INSTALLATION OF AN ELEVATOR.

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INTERESTED PERSONS MAY INSPECT PLOT PLANS AT TOWN HALL DURING TOWN BUSINESS HOURS, MONDAY THROUGH FRIDAY, 8:00 A.M. TO 4:00 P.M.

CP 20180727 1T



800 Coastal Highway, Fenwick Island, DE 19944-4409 302-539-3011 ~ 302-539-1305 fax www.fenwickisland.delaware.gov

From:

Pat Schuchman

Date:

July 25, 2018

Subject:

**Application for Building Permit** 

**Buas Sands Hotel LLC** 

To:

**Board of Adjustments** 

cc:

T. Tieman, Town Manager

B. Weistling, Building Commissioner

An application for a building permit for the construction of a 65-room hotel was submitted on May 4, 2018 by Mr. Spiro Buas of Buas Sands Hotel LLC.

A review of the plans commenced and the Town Building Official followed proper Town procedures when denying the building permit application. Per Town Code Chapter 61-3 (Issuance of Permits), the application has been reviewed by the Building Official and two Building Committee members who subsequently issued a denial of the building permit due to the non-conformity of the elevator shaft which will exceed the maximum roof height by a distance of six feet. Chapter 61-3D states: "if disapproved, the owner may appear before the Town Board of Adjustments for a variance or appeal."

A Board of Adjustments hearing is scheduled for Thursday, August 23, 2018 on the matter of a request for a variance and appeal to the Building Official's decision.

Very truly yours,

Patricia J. Schuchman

**Building Official/Code Enforcement** 

Town of Fenwick Island

Mould, William E. & Louise M. **Buas Sands Hotel LLC**  □ Timothy G. Willard Paynter House 12325 Palermo Drive Mr. Spiro Buas Silver Spring, MD 20904 26 The Circle P.O. Box 8 Georgetown, DE 19947 Ocean City, MD 21843 Weistling, William & Elsie Picard, Ralph Hoffman, Kurt & Jeanne Marie : 11803 Eden Road 7 E. Indian Street 678A Yarborough Way South Fenwick Island, DE 19944 Silver Spring, MD 20904 Monroe Township, NJ 08831 Gjoni, Ervin & Agliaia Goll, Nancy Sunshine Plaza LTD 8 E. Indian Street Seaside Inn, MBELTA LLC P.O. Box 599 10459 Golf Course Road Fenwick Island, DE 19944 Ocean City, MD 21843 Ocean City MD 21842 Napolitano, Jacqueline Fox, Ralph Westwater, Joseph & Nellie 3300 Breckenridge Way P.O. Box 3338 1153 Colonial Road Riva, MD 21140 Gettysburg PA 17325 McLean VA 22101 Driver, Henry & Sylvia Hayden, Warren & Jody Graefe, Steven & Edith 8 E. James Street 1405 Goldenrain Drive 1954 Mt. Horeb Road Fenwick Island, DE 19944 Crofton, MD 21114 Street, MD 21154 Tingle, Reid & Amy Tingle, Clarence & Diane Tingle, C. Mark & Christine H. 1601 Coastal Highway P.O. Box 407 38952 Bayfront Drive Fenwick Island, DE 19944 Selbyville, DE 19975 Ocean View, DE 19970 Pridegeon, Dennett & Pamela DeCesaris, Anthony & Josephine Camden, Jon & Susan 1 E. James Street 1609 Coastal Highway 1 Dowlin Forge Road Fenwick Island, DE 19944 Fenwick Island, DE 19944 Downingtown, PA 19935 Bromley, John F & Eleanor Pauley, Keith & Melanie Raffetto, Joseph & Deborah 513 West Broad Street Apt. 204 6 Quail Coveery Court 27590 Crooked Oak Lane Falls Church, VA 22046 Reisterstown, MD 21136 Salisbury, MD 21801

Lear, Lizabeth & Hanlon, Basil J

1602 Coastal Highway

Fenwick Island, DE 19944

Jennings, Vivian

1600 Coastal Highway

Fenwick Island, DE 19944

Maier, Bonnie & Jon

Wilmington, DE 19810

2010 Woodbrook

# Buas Enterprises, Inc.

PO Box 8, Ocean City MD 21842 P: 410-213-9556 | F: 410-213-9527

July 23, 2018

The Town of Fenwick Island 800 Coastal Highway Fenwick Island DE 19944

Dear Ms. Patricia Schuchman,

I am writing in reference to the Hotel project at 1501 Coastal Highway, which was recently denied a Building Permit by the Town of Fenwick Island. I would like formally appeal this decision and seek a variance from the Board of Adjustments. We are requesting a height increase to allow for the elevator safety overrun and mechanical features of the elevator. We are requesting a height increase of no more than six feet above the mandated height limit.

We are requesting the elevator overrun for safety purposes only. Additionally, the area impacting the height limit it is used to house the mechanical equipment of the elevator.

Ownership and the construction team are committed to working together with the Town of Fenwick Island to create an acceptable solution for everyone when it comes to making the pieces exceeding the limit, less visually intrusive.

Please find attached to this letter additional information from Fisher Architecture and Mr. Keith Fisher, whom is the Architect to represents our project. Additionally, we have included a check in the amount of \$2,000.00 as requested. We look forward to working with the Town of Fenwick Island to create a solution.

Sincerely,

Spiro Buas

Owner

2,000.00

DOLLARS 000200 \*\*2,000.00 7/3/2018 C 28 3850 50 11 II O O O O III Town of Fenwick Island 800 Coastal Highway Fenwick Island DE 19944 SANDS FENWICK INC.
Operating Account
PO Box 8
Ocean City, MD 21843 MEMO: Variance Permit 2018 PAY TO THE ORDER OF

000200 Payment 2,000.00 2,000.00 7/3/2018 Discount Check Amount Balance Due 2,000.00 Oríginal Amt. 2,000.00 Type Reference Bill Variance Permit 2018 Town of Fenwick Island SANDS FENWICK INC. Date 5/9/2018

8/14-20 HARD FOR SPIN.



Fenwick Sands - Tapestry by Hilton Spiro Buas 1501 Coastal Highway Fenwick Island, DE 19944 Tax Map No. 1-34-23.12-179

RE: Height Variance, HVAC and Elevator Overrun

Dear Chair of BOA and Members;

Our firm, Fisher Architecture has partnered with the current property owner Spiro Buas to construct a Tapestry by Hilton Hotel on this property. The planned hotel shall comply with all of Fenwick's code requirements except for one feature, which will require a variance as further explained below. We are requesting an increase in height, not to exceed six feet, to allow for the placement of the elevator safety overrun and mechanical features.

Otherwise, the overall design of the new hotel will provide upscale transient housing and invite guest to experience a type of stay that is not found in the adjacent surroundings. The plan should benefit the Town financially and improve local property values and quality of life. We submit that the variances requested are minimal and necessary and meet the standards required by Title 22 Chapter 3 of the Delaware Code.

Attached is a plan showing a vertical rendition of the planned hotels and a survey showing the location. We are requesting a variance of no more than six feet above the height limit mandated by the Town of Fenwick Island.

We have exhausted our team's full resources to find ways to accommodate the current code. There are many considerations we take into account when designing a space for individuals to vacation and to fit into the surrounding area. Without the height variance for the elevator the interior of the hotel would be unusually altered, impractical and perhaps unsafe.

Our elevator requires an overrun for access to the top mechanical areas. The current code requires this space so that workers and maintenance staff can

542 Riverside Drive Salisbury, MD 21801 (410) 742-0238 (office) (888) 879-7149 (fax) Fisherarchitecture.com

Int'l here:

safely operate in the area without the threat of being crushed by an inadvertent use of the cab. If this overrun had to be placed within the permitted roof line, the design would require complicated ramps within the elevator lobbies on each floor. The floor areas would have to be lowered so that the overrun can be within the height limit. This design would be very inefficient and costly and appear old and out dated. The maid staff and guests would need to move around this area up and down instead of on a flat surface.

Finally, if the elevator overrun would have to be internal support beam would have to be built into the roof structure. This structure will become a maintenance issue in years to come for the building owner. Access to this beam is required to verify that it is not deteriorating and that it is maintaining its structural integrity.

Allowing the overrun to extend into the current height limit will benefit the safety and maintenance team greatly. It will also permit the building to have a much more efficient design at each floor lobby. The ceiling heights can be increased so that areas of great use can be designed with the appropriate scale and proportion. Features could be considered to make the increase less visually intrusive, such as paint color, fencing or vegetation. In addition, the elevator overrun is currently designed to be located in an area that is not part of the prominent elevation. It is not an element that will stand out and be recognized as obtrusive or out of character if the height is granted. This request is being made solely for safety reasons, as the elevator over run is a requirement for safety, just as a fireplace must have a chimney extend past the roof line for safety reasons.

We respectfully request that the board consider these two variances suggestions and grant the project variance increase of no more than six feet, specifically for the elevator and the mechanical units.

Sincerely,

Keith P. Fisher, AIA, NCARB, LEED AP Fisher Architecture, LLC 542 Riverside Drive Salisbury, Md. 21801 Kfisher@fisherarchitecture.com

# **TOWN OF FENWICK ISLAND**

# **BUILDING PERMIT APPROVAL / DISAPPROVAL FORM**

Nam	ne of Owner: <u>BUAS SANDS HO</u>	OTEL LLC Date: MAY 4, 2018
Prop	erty Location: <u>1501 COASTAL</u>	HIGHWAY
Build	ders Name:	Building Permit #4886
		SECTION I
র্ভ	Building Permit Disapproved	Date:JULY 20, 2018
Reas	on for Disapproval:	
	ATOR SHAFT WILL EXCEED MAPTER 160-5B(2).	XIMUM ROOF HEIGHT PERMITTED IN
Q	Building Official Signature:	Patricia Schusliman 1/2018
	Building Committee Signatur	e: William Westery Jr 7/20/18
	Building Committee Signatur	e: Villian Wently J 7/20/18 e: Jose Sypin J 7/20/18
	SECTION II – New	Construction Over \$20,000
	Building Permit Approved	Date:
	<b>Building Official Signature:</b>	
	Building Committee Signatur	e:
	Building Committee Signatur	e:



# <u>Town Of Fenwick Island Delaware</u> Building Official Office

800 Coastal Highway, Fenwick Island, DE 19944 Phone: (302) 539-3011 Fax: (302) 539-1305

# Application for Building Permit

<b>Location Address</b>	1501 Coastal Hwy	Permit Number	4886		
Tax Map Number		Lot Number	Rt. 14 Lot Section 1		
Owner's Name	Owner's Name Buas Sands Hotel LLC, A Delaware Limited Liability Corp				
Residence	1501 Coastal Hwy Fenwick Island DE				
	renwick Island De				
_,					
Phone					
Builder's Name	Business License #				
Builder's Address					
Builder's Phone		-			
Detailed Plans Pr	ovided ⊠ Yes □ No □ Pending	Site Plan Provided X Ye	s No Pending		
Sussex County Pe	rmit pending	DNREC Permit n/a			
ECC	Permit Fee	Expiration Da	ite		
I/We hereby apply for a Permit for:					
Construct a 65-room hotel with swimming pool and elevator					
Construct a 0.3-100m note: with swinting pair and elevator					
SPECIAL REQUIREMENTS: In accordance with Town Code Chapter 61, construction is permitted Monday thru Saturday 8:00 am to 6:00 pm. No construction on Sundays or Holidays. No pile driving June 1 thru August 1. Construction trash materials are to be contained in a dumpster or container and are to be emptied as needed to prevent windblown trash.					
APPLICANT'S STATE	MENT:				
I, the applicant, agree that I have read and understand this document and that all the information provided is true and factual to the best of my knowledge. I and/or the builder will adhere to the approved plans and comply with the Code of The Town of Fenwick Island. Upon completion of the work described, I will provide all documentation requested by the Building Official so that a final inspection by The Town can be completed. A Certificate of Compliance will be issued by The Town of Fenwick Island if the work is in compliance with Town Code. Failure to obtain this certificate from The Town is a violation of Chapter 160 the Town Code and subject to penalties. I agree to repair or pay the reasonable cost of repair to any public or private property damaged in the course of the work hereby authorized.					
Applicant Signature		Date			
Zoned CO	In Flood Zone AE - 5	Elevation Certif	icate Needed		
As Built-Final Loca	ation Survey Needed 🛛 Board of <i>i</i>	Adjustments 🛛 '	co 🗵		
Approved by (Town Official) Approved Date 5/4/2018					





















O VIEW AT SOUTH WEST CORNER - VIEW PROM SY AWAY PROM INJURING













(3) VIEW AT NORTH WEST CORNER - VIEW FROM 64" AWAY FROM PULLDING





















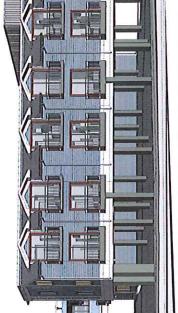




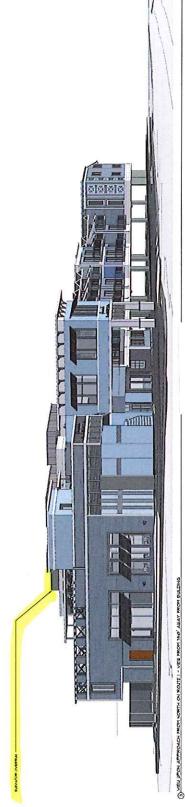




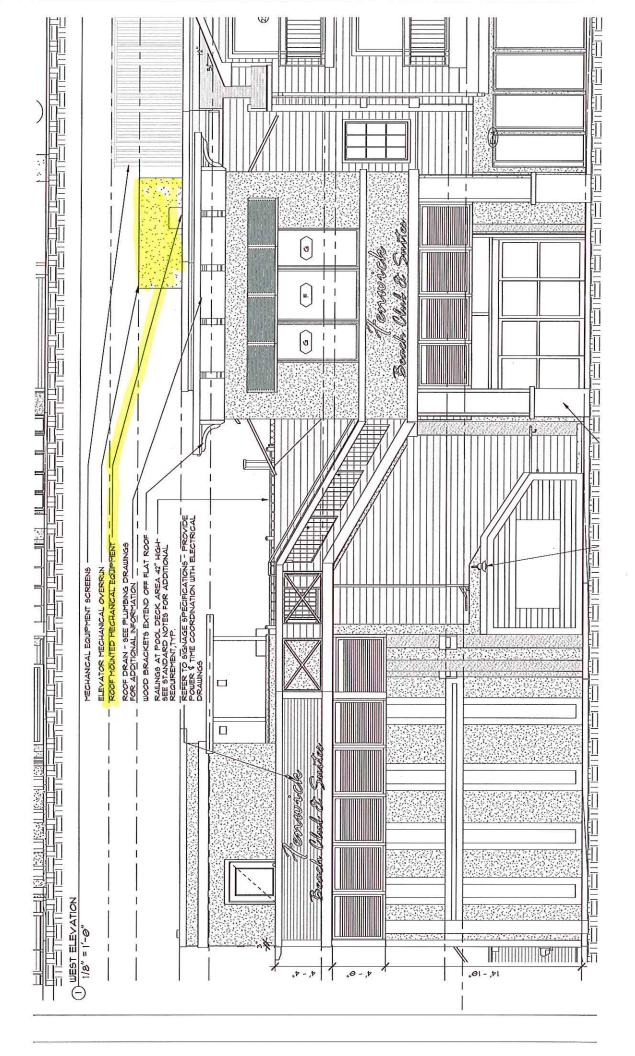


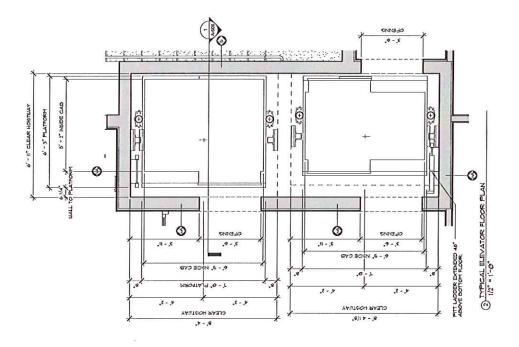


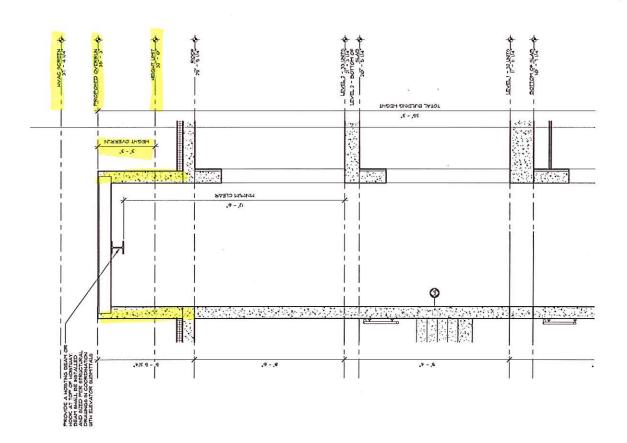




North View







- C. The proposed use of the building or structure.
- D. The estimated cost of the work based upon a signed contract. [Amended 7-22-2011]
- E. Proof of ownership.

# § 61-3. Issuance of permits.

- A. The Building Official shall review the plans for complete compliance with all Town ordinances or other applicable requirements. He may discuss the plans with the owner or agent for clarification of any part of the plans and point out necessary changes for compliance or possible reasons for disapproval. The Building Official shall submit his recommendation for approval or disapproval to the Building Committee, setting forth the reasons for his recommendation.
- B. Any new construction costing less than \$20,000 may be approved and the building permit issued by the Building Official without submitting the building permit application to the Building Committee for approval. Any additions, alterations or renovations of existing structures which do not change the horizontal dimensions, roof peak height or flood zone elevation requirements of the existing structure may be approved and a building permit issued by the Building Official without submitting the building permit application to the Building Committee for approval. [Amended 12-16-1989; 9-29-1995; 10-31-2003]
- C. The Building Committee will instruct the Building Official to issue the permit, if approved. Signatures of at least two members of the Building Committee are required for approval.
- D. If disapproved, the owner may appear before the Town Board of Adjustments for a variance or appeal (procedures in Chapter 160, Zoning, § 160-10).
- E. The Building Official shall see that the building conforms in all respects to the provisions of Chapter 160, Zoning, and/or other applicable ordinances. [Amended 1-31-1992; 11-21-1997]
  - (1) Mercantile licenses. After a building permit has been issued, the Building Official shall see that the general contractor and all subcontractors and artisans involved in the work have the proper mercantile licenses.
  - (2) Stop-work orders. Stop-work orders are issued by the Building Official of the Town of Fenwick Island as follows:
    - (a) On any work that is contrary to the provisions of this chapter, Chapter 160, Zoning, other applicable ordinances and/or a building permit, or on any work being performed in an unsafe or dangerous manner. All such work shall be stopped immediately upon issuance of a written or oral stop-work order.
    - (b) Where no emergency exists, notice shall be in writing, presented to the owner or his agent or to the person performing the work.

ALLEY — A public way designed as an alley on the record plat or dedicated as such by deed.

APARTMENT — A set of rooms with housekeeping facilities and used as a dwelling for a single family. [Amended 9-23-2005; 2-22-2013]

APARTMENT BUILDING — Any structure containing two or more apartments; not applicable to mixed use in a building designed specifically for residential use. [Added 9-23-2005; amended 2-22-2013]



BUILDING — A structure having a roof supported by columns, posts or walls which is utilized for the shelter, support or enclosure of persons, animals or chattels, provided that this definition shall not be construed so as to include a trailer, travel trailer, recreational vehicle or mobile home, irrespective of whether or not the trailer, travel trailer, recreational vehicle or mobile home is mounted on wheels or otherwise supported.

BUILDING LIMIT LINE — A line beyond which the front wall of a building shall not project, except as provided in § 160-6.

BUSINESS — Nonresidential activity, employment, occupation, trade, profession or enterprise, whether for profit or not, in which an individual(s) is willing to invest time and/or capital on future outcome. [Added 2-23-2018]

COMMERCIAL CELL PHONE COMMUNICATIONS FACILITIES — A commercial cell phone site or tower where antennas and any related electronic equipment are placed on structures, such as, but not limited to, a radio mast, tower or other raised structure, to increase a cell or cells in a cellular network. [Added 6-23-2017]

COMMISSION — The Zoning Commission of the Town of Fenwick Island.

COURT — An open, unoccupied space on the same lot with a building, opening upon a street, alley, yard or setback.

CURB LEVEL — The mean level of the established curb in front of the building.

DEPTH OF LOT — The mean horizontal distance between the front lot line and the rear lot line.

DISTRICT — Area within a particular zoning classification; a zone.

DWELLING, SINGLE-FAMILY [Amended 7-26-1996 by Ord. No. 77; 6-22-2001; 9-28-2001] —

- (1) A building constructed for occupancy as a single-family residence, having:
  - (a) A living room area, a dining room area and one kitchen for food preparation, individually or in combination; and
  - (b) A maximum of six bathrooms total, at least one of which must be a half bathroom and which cannot be a full bathroom, as such terms are defined below: [Amended 12-9-2016]
    - [1] Full bathroom Having a sink, toilet and bathtub or shower facilities;

vehicles are equipped for operation, repaired or kept for remuneration, hire or sale. [Amended 2-22-2013]

GROUND LEVEL — Any area not more than 12 inches above the ground as measured from the ground to the top of the finished surface. [Added 6-23-2006]

HEIGHT OF BUILDING — The vertical distance measured from the highest point of the crown of that portion of the street or road which is immediately adjacent to and abutting the property on which the building is to be erected to the elevation of the highest point of the building.

HOME OCCUPATION — An occupation in connection with which there is no display (other than signs otherwise herein provided for), that will indicate from the exterior that the building is being utilized in whole or part for any purposes other than that of a dwelling; in connection with which there is kept no stock-in-trade nor commodity sold upon the premises, no person employed other than a member of the immediate family residing in the premises, and no mechanical equipment used except such as is permissible for purely domestic or household purposes.

IMPROVED LOT — A parcel, lot, tract or area of land to which any man-made changes or improvements have been made, examples of which include, but are not limited to, the construction of a structure, primary building or accessory building, paving, grading, landscaping, construction of a park and/or the installation of utilities. [Added 2-23-2018]

LOT — A measured portion of land having three or more sides that form an enclosure designated by boundaries as set forth in a plot or survey, and having its frontage on a public street.

LOT AREA — The total square footage of land contained within its legally defined lot lines, excluding any area within any public right-of-way. [Added 6-23-2006]

LOT, CORNER — A lot fronting on two or more streets intersecting at an angle. [Amended 2-22-2013]

LOT, INTERIOR — A lot with frontage on but one street.

LOT LINES — Lines bounding a lot.

LOT, THROUGH — A parcel extending through a block from one street to another.



MECHANICAL EQUIPMENT — Any equipment, including, but not limited to, heat pump, hvac system, air-conditioning equipment, emergency generators, or aboveground propane or fuel tanks, used in connection with a residential or commercial building. [Added 6-23-2017]

MOBILE HOME — A structure which is transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.

MOTEL/HOTEL — A building containing no less than 16 nor more than 65 sleeping rooms occupied by transient persons as guests for compensation on a daily basis. Each motel/hotel building shall include an on-site management and reception area, daily housekeeping services, and a lighted exterior sign identifying the name of the motel/hotel

160:4

and the vacancy/no vacancy status. Sleeping rooms may be offered individually or in combination in suites. [Amended 9-23-2005'; 12-11-2015]

NONCONFORMING USE — A use, whether of land or of a structure, which does not comply with the applicable use provisions of this chapter or an amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of this chapter or amendment, or prior to the application of this chapter or amendment, by reason of its location. [Amended 7-26-1996 by Ord. No. 77]

OFFICE — A place where business is transacted or a service is supplied. An "office" may be the directing headquarters of an organization or a place in which a professional person conducts his or her professional business.

POOLS, RESIDENTIAL — Any permanent outdoor recreational structure, including spas and hot tubs, that can contain 24 inches or more in depth of water. [Added 4-23-2004]

u

PRIMARY BUILDING — The main building on a lot; the building in which is conducted the principal use of the lot on which it is located and which, in the Residential Zone, is the residential structure on the lot with the largest gross floor area. [Added 2-23-2018]

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PRIMARY STRUCTURE — That which is built or constructed, an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some manner. The term "structure" shall be construed as if followed by words "or part thereof." [Added 2-23-2018]

PROFESSIONAL BUSINESS — The business conducted by a professional person.

<sup>1.</sup> Editor's Note: This ordinance replaced the former separate definitions of "hotel" and "motel" in this section.

an appeal, the appealing party shall be given an opportunity to be heard and to present his case for rescission or reduction of the civil fine before the Town Council. The decision of the Town Council following any such appeal shall be final. Any and all civil fines imposed hereby shall be collectible in the same manner as delinquent taxes, and the Town shall be entitled to recover all costs and reasonable attorneys' fees incurred in connection with any such collection effort.

# B. Height regulations: [Amended 2-22-2013; 4-1-2016]

- (1) No building shall exceed a height of 30 feet, except as provided in § 160-8A(2).
- (2) Notwithstanding § 160-5B(1) above, where the principal building has a freeboard of 18 inches to 24 inches above base flood elevation (BFE), the principal maximum building height may be increased by said 18 inches to 24 inches, not to exceed a total building height of 32 feet measured from the highest point of the crown of the road.
- C. Area regulations. Same as § 160-4C as to use for single-family dwellings. For uses other than residential, the front building limit line setback, side yard and rear yard requirements shall be as follows:
  - (1) Front building limit line. The building limit line shall be set back from the front lot line not less than 15 feet. [Amended 7-24-2015]
  - (2) Side yard. There shall be side yards on each side not less than seven feet in width, except as provided in § 160-8A(3) and (8), and except that, in the case of corner lots, the side yard adjacent to the side street shall have a minimum width of 15 feet. [Amended 2-22-2013]
  - (3) Rear yard setback requirements: [Amended 7-24-2015]
    - (a) The rear yard building limit line shall be set back from the rear lot line not less than 10 feet. In addition:
      - [1] All rear yard setbacks for lots located east of Route 1 shall include a five-foot landscaped buffer when abutting lots used for residential purposes.
      - [2] All rear yard setbacks for lots located west of Route 1 shall include a professionally engineered five-foot vegetative stormwater buffer when abutting lots used for residential purposes.
  - (4) Any mechanical equipment shall be prohibited in the side yard setbacks except that, in the case of corner lots, the side setback adjacent to the side street with a minimum setback of 15 feet, there shall be permitted an encroachment of no more than four feet for such mechanical equipment. Mechanical equipment located in the rear setback must be adjacent to the building and shall be allowed to encroach into the rear yard setback not any closer than six feet to the rear property line and to a line not less than 15 feet from the front property line. Mechanical equipment located in any rear yard, front yard or corner side setback shall be screened from view with screening that has openings constituting between 20% and 30% of the total surface area of the screening to provide for the

160:16

flow-through of air. A detailed design drawing of the mechanical equipment, together with any required screening, shall be submitted with the application for a building permit. [Added 6-23-2017]

- (5) Commercial pools, hot tubs and spas. [Added 6-23-20174]
  - (a) The front, side and rear yard setback requirements for commercial pools, hot tubs and spas shall be the same as those which apply to the main structure for the property.
  - (b) Every unenclosed portion of a commercial pool shall be protected by a continuous safety barrier consisting of county-approved fencing or its equivalent. Fencing which is part of such a required commercial pool safety barrier may be up to six feet tall. Barriers are not required for commercial hot tubs or spas when a cover is provided.
  - (c) All commercial pools, hot tubs and spas shall comply with all applicable state and county regulations.
- (6) The area between the front lot line and the front building limit line may be used for driveways and/or parking spaces provided it complies with § 160-10B(2) (size of parking spaces in the Commercial Zone). The side yard and rear yard areas may also be used for driveways and parking areas; provided, further, that only limited-access entrances and exits to such driveways and parking areas are permitted from the bordering streets. The limited-access entrances and exits shall be controlled by drop between such entrances and exits, and the parking areas shall comply with the parking regulations of this chapter. [Amended 8-22-2008; 7-24-2015]
- (7) No part of any required building setback area in the front, rear, or side of any lot in the Commercial Zone may be covered or paved with impervious or semi-impervious materials such as concrete, asphalt, brick, flagstone, etc. Such coverings or paving existing at the time of enactment of this subsection may continue to be used and repaired as a nonconforming use, but may not be expanded in any horizontal dimension nor rebuilt or replaced with such materials. [Added 7-24-2015]
- (8) Each motel/hotel permitted to be erected or altered hereafter shall occupy a lot(s) providing a minimum of 1,000 square feet of land area for each sleeping room therein, including sleeping rooms in any apartment included in the motel/hotel building. Each motel/hotel use existing as of the date of the adoption of this amendment on December 11, 2015, shall occupy a lot(s) providing a minimum of 600 square feet of land area for each sleeping room, not to exceed a total of 65 sleeping rooms, including rooms in any apartment included in the hotel/motel building. [Amended 9-23-2005; 12-11-2015]

160:17 05 - 01 - 2018

<sup>3.</sup> Editor's Note: This ordinance also provided for the renumbering of former Subsection C(4) through (6) as Subsection C(6) through (8), respectively.

Editor's Note: This ordinance also provided for the renumbering of former Subsection C(4) through (6) as Subsection C(6) through (8), respectively.

From:

Teresa Tieman

Sent:

Wednesday, August 15, 2018 1:05 PM

To:

Pat Schuchman

Subject:

FW: Please support Sands Motel variance Aug. 23

From: Andrew Maiorino <andrew@davcommedia.com>

Sent: Wednesday, August 15, 2018 12:28 PM
To: Teresa Tieman <townmgr@fenwickisland.org>

Cc: rebuildsands@ocrooms.com

Subject: Please support Sands Motel variance Aug. 23

# Dear Board of Adjustments:

Please support the variance for the Sands Motel that will come before your board on August 23, 2018. The building meets Fenwick Island height restrictions of 32 feet and I urge you to approve the elevator shaft overrun, which is 2 feet LOWER than the HVAC, which has already been approved, and is minimally visible from the road. Without this variance, this redevelopment project is at risk.

Thank you,

Your Name and Town

From:

Teresa Tieman

Sent:

Wednesday, August 15, 2018 3:46 PM

To:

Pat Schuchman

Subject:

FW: Please support Sands Motel variance Aug. 23

----Original Message----

From: Benwaide <benwaide@comcast.net> Sent: Wednesday, August 15, 2018 2:59 PM

To: Teresa Tieman <townmgr@fenwickisland.org>

Cc: rebuildsands@ocrooms.com

Subject: Please support Sands Motel variance Aug. 23

#### Dear Board of Adjustments:

Please support the variance for the Sands Motel that will come before your board on August 23, 2018. The building meets Fenwick Island height restrictions of 32 feet and I urge you to approve the elevator shaft overrun, which is 2 feet LOWER than the HVAC, which has already been approved, and is minimally visible from the road. Without this variance, this redevelopment project is at risk.

I imagine that that small faction that has been against the Sands renovation since the beginning will be there with an organized resistance. I hope that common sense will prevail with the Board of Adjustments: the Sands as it stands is an embarrassment to the Town and this small variance will allow it to be transformed into a lovely, more revenue generating business!

Thank you,

Ben Waide 12 West Dagsboro Street

Sent from my iPad

From:

Teresa Tieman

Sent:

Wednesday, August 15, 2018 3:48 PM

To:

Pat Schuchman

Subject:

FW: Please support Sands Motel variance Aug. 23

From: Hugh Curd <hucurd@gmail.com>
Sent: Wednesday, August 15, 2018 3:05 PM
To: Teresa Tieman <townmgr@fenwickisland.org>

Cc: rebuildsands@ocrooms.com

Subject: Please support Sands Motel variance Aug. 23

#### Dear Board of Adjustments:

Please support the variance for the Sands Motel that will come before your board on August 23, 2018. The building meets Fenwick Island height restrictions of 32 feet and I urge you to approve the elevator shaft overrun, which is 2 feet LOWER than the HVAC, which has already been approved, and is minimally visible from the road. Without this variance, this redevelopment project is at risk.

Thank you,

hugh curd/fenwick island

Brian & Lisa Kelly 2 W. Indian Street Fenwick Island, DE 19944

Dear Board of Adjustment Member,

We are writing you to express our concerns with the request for variance by the developer and owner of The Sands property and the owners of 5 E Houston St.

As owners of residential property in our town we were well aware of the towns building code and height/setback restrictions when we built our home. We were told that for any variance to be approved, a hardship or some other discriminating defect affecting our ability to build within the current building code needed to exist. As with the majority of property owners in our town, we designed our home and built within the town's building code, since no hardship or defect could be demonstrated.

At this time we do not believe that either of these properties exhibit a hardship or defect that would prohibit them from building within the towns current building ordinance. In fact, the increase in room density approved specifically for The Sands property has helped to create this problem by greatly expanding the mechanical resources (Elevators, HVAC) needed to support the much larger project. Now both of these expanded resources are being placed outside of the current building height restrictions. While the HVAC mechanicals are not part of the requested variance, we strongly believe that the town building official and town attorney, after getting pressure from the developer, have made a significant error in their decision to allow mechanical equipment which are physically attached to the building, exceed the current height restriction.

I must include that we are not opposed to the replacement of The Sands and a new hotel on this property. However placing elevator shafts and HVAC units that exceed the current height restrictions will have a negative affect on myself and other neighbors. I have noticed that all renderings in the developers application are from the ground level. As I am sure you are aware many Fenwick homes have reverse floor plans for the express purpose of the views that our current height restrictions provide. Is it really fair to the neighboring property owners that an exception be made to support the increased building height without regard for the negative impact on those properties.

We also are concerned that allowing a set-back variance on 5 E Houston St. without proper justification could negatively impact adjacent properties and set a bad precedent for future incursions into the towns setback requirements. Other options that keep the elevator shaft inside the existing setback should be fully explored and considered for this property.

We respectfully request that the town should exercise good judgment and discretion when allowing a variance that has negative impact on other property owners and neighbors.

While we understand the need to provide an occasional variance, we firmly believe that neither of these properties can satisfactorily demonstrate that the variance requested will not have a negative impact on neighboring property owners and the town. Thank you for you consideration of our thoughts and concerns in this matter.

Sincerely

Brian & Lisa Kelly

Boon Kelly

From:

Teresa Tieman

Sent:

Friday, August 10, 2018 8:48 AM

To:

Pat Schuchman

Subject:

FW: Board Of Adjustments Hearing

From: Kevin Carouge < mkcarouge@gmail.com>

Sent: Friday, August 10, 2018 8:46 AM

To: Teresa Tieman <townmgr@fenwickisland.org>
Cc: Kevin Carouge <mkcarouge@gmail.com>
Subject: Board Of Adjustments Hearing

#### Terry,

I am unable to attend the upcoming hearing due to an out of state commitment, and would like to respectfully request that my views on the two variances being discussed be put on the record.

- 1.) Height Variance Sands Motel With much discussion this hotel owner was given a significant variance regarding density allowing 65 rooms on the property vs. the 39 currently allowed. I am opposed to allowing yet another exception to the towns regulations for this property owner. Adding 6 feet to the already recently increased building height could result in a structure of 38ft in height. There are most certainly other options for this, such as an hydraulic elevator which does not require overhead mechanicals. If we continue to allow exceptions to our ordinances, the Town of Fenwick Island will become indistinguishable from our neighbor in the unincorporated part. The rational for the regulations we have is to protect the uniqueness of the town, we are slowly morphing into the areas that surround us.
- 2.) Set Back Variance Elevator Homeowner The town recently reviewed the issue of setbacks as it regarded mechanical units for commercial buildings and granted a further encroachment of the setbacks, something that was intended to protect the access to buildings in the event of emergency, and provide an appropriate buffer for all property owners. I am against allowing this variance, even if the argument to support is based on the owners disability. Again, there are other options such as a stair lift which could be employed. The argument here is similar as above, if we keep modifying the laws and ordinances we put in place (all for sound and positive reasons) then we lose the integrity of the town and become a hodgepodge of whomever can make an individual argument to disregard them.

There will always be individual self-serving petitions to the town to change our regulations. If the regulations are not appropriate or applicable then they should be changed and voted on by the entire town.

Thank you for your time.

Kevin Carouge 1006 Bunting Ave.

#### Fenwick Island board of adjustment

This letter is in regard to the Sands Motel request to increase the height limit of their motel. The height limit was enacted by our town fathers in the 50's to make sure Fenwick did not allow high rises or condominiums such as those built in Ocean City and Bethany Beach. I think everyone in town is on the same page with this trend or thought.

At that time almost, all structures in town were small beach cottages or shacks that were used as beach retreats built to escape the heat of the summer. My son born in 1973 made the full-time residents total 36 not including pets. Times have changed. The houses being built today are constructed for year-round use. With more and more retirees making Fenwick their full-time homes and people using their houses year-round instead of just in the summer.

I do not understand why there is so much opposition against raising the height of a structure to help the home owner create a more usable living unit. It took two years to enact a rule so flood insurance could be purchased to protect the home owner from storms that happen every so often. The pitch of a roof dictates how long shingles will last and make the structure water proof. Most of the new homes in town now have peaks less then 4/12 or flat roofs. These roofs are going to have to be maintained because it rains uphill at the beach. Also, seagulls tend to drop clams on the flat roofs which puts holes in the rubber membrane and has to be repaired. So why everyone thinks 30' Hight limit should be set in stone is beyond me.

Now regarding the Sands request for variance to exceed the height limit for an elevator shaft on their new motel. They need three floors to make the project profitable. By having an elevator not go to the third floor doesn't make common sense. I understand the shaft is to house mechanical components and provide a safety requirement of all elevators. This is a onetime decision and it will not make a major rule change to the present ordinance which I believe needs to changed anyway.

The town will benefit from a new motel with room tax increases and a much needed facelift to a tired and rundown structure. Please grant this request and make Fenwick a better town for everyone.

Sincerely,

Jeffrey Mumford

5 West Indian Street

Fenwick Island Delaware 19944

Memper

From:

Liz Lear <learhanlon@aol.com> Thursday, August 16, 2018 2:41 PM

Sent: To:

Pat Schuchman

Subject:

Aug. 23rd Board of Adjustments Hearing

TO: Pat Schuchman - Building Official

Although I would like to see a new clean motel, I am against granting the 6' variance for the installation of an elevator. The motel owner was aware of the height restrictions when he purchased the property. I do not want the vista across the street from me to be an elevator tower.

Liz Lear 1602 Coastal Highway Fenwick Island, DE

From:

Teresa Tieman

Sent:

Friday, August 17, 2018 11:41 AM

To: Subject: Pat Schuchman FW: contact form

From: william.clark.45@gmail.com <william.clark.45@gmail.com>

Sent: Friday, August 17, 2018 11:21 AM

**To:** Town Clerk <townclerk@fenwickisland.org> **Cc:** Teresa Tieman <townmgr@fenwickisland.org>

Subject: contact form

Your Name: William Clark

Your Address: 911 McWilliams St

City: FENWICK ISLAND

State: delaware

Zip Code: 19944

Phone Number: 3022452670

Email: william.clark.45@gmail.com

Department to Contact: admin, bldgInspections, townManager, commDevelopment, econDevelopment, envirServices,

mayor, planZone

Your Subject: Sands Motel

Your Message: I am not sure that I will be able to attend the Board of Adjustment hearing regarding the Sands motel variance. I just wanted to be on record as being in full support of this variance. There are currently zero places in Fenwick for friends and family to stay that can be recommended. I fully support the Sands renovation project. I am a full time resident. Thank you. --Bill Clark